

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:03CV564

FILED
03 NOV 25 PM 2:15
U.S. DISTRICT COURT
W. DIST. OF N.C.

MARIA ARELLANO CANTU,)
)
Plaintiff,)
)
v.)
)
TOWN AND COUNTRY TOYOTA,)
MARCUS DAVID CORPORATION, and)
NATIONAL AUTO FINANCE COMPANY,)
)
Defendants.)

NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Defendant Marcus David Corporation, d/b/a Town and Country Toyota ("Defendant Town & Country"), in accordance with 28 U.S.C. § 1446, hereby gives notice and does remove to this Court the civil action bearing the caption Maria Arellano Cantu v. Town and Country Toyota, Marcus David Corporation, and National Auto Finance Corporation, Case No. 03 CVD 15092, which is now pending in the General Court of Justice, District Court Division, Mecklenburg County, North Carolina, for the following reasons:

1. Plaintiff filed the Complaint in the above-captioned lawsuit on or about 22 September 2003 and obtained one or more Summonses. A Summons and a copy of the Complaint were served on Defendant Town & Country on 31 October 2003. No further proceedings have taken place in the state court action since the service of the Summons and Complaint on Defendant Town & Country. Copies of Plaintiff's Summons and the Complaint are attached hereto as Exhibit 1.

2. In the Complaint, plaintiff Maria Arellano Cantu ("Plaintiff") alleges that Defendant Town & Country failed to provide Plaintiff with all required disclosures in violation of the Federal Truth in Lending Act, 15 U.S.C. § 1638, and Regulation Z, 12 C.F.R. § 226.18. Plaintiff also

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alleges state-law causes of action against defendants based upon the same allegations for violation of the North Carolina Retail Installment Sales Act and violation of N.C.G.S. § 75-1.1 (Complaint ¶¶ 16-18).

3. The United States District Court for the Western District of North Carolina has original jurisdiction over Plaintiff's Truth in Lending Act cause of action pursuant to 15 U.S.C. § 1640(e) and 28 U.S.C. § 1331, and this lawsuit may therefore be removed to this Court pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446.

4. As required by 28 U.S.C. § 1446(d), Defendant has served a written Notice of Filing of Notice of Removal on the Plaintiff (through her counsel) and is promptly causing to be filed a copy of the Notice of Filing of Notice of Removal with the Clerk of Superior Court for Mecklenburg County, North Carolina, as well as a copy of the instant Notice of Removal. A copy of that Notice of Filing of Notice of Removal is attached hereto as Exhibit 2.

5. Although "Town and Country Toyota" is listed as a defendant in the case caption, upon information and belief, no such legal entity exists. Defendant Town & Country does business as "Town & Country Toyota."

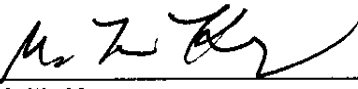
6. Defendant Nuvel Credit Corporation, d/b/a National Auto Finance Company, through counsel, consents to the removal of this case as evidenced by its Consent to Removal, attached hereto as Exhibit 3.

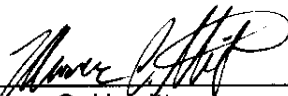
7. The time period for filing this Notice of Removal in accordance with the provisions of 28 U.S.C. § 1446 has not elapsed as of today's date.

WHEREFORE, Defendant Town & Country removes this case from the District Court of Mecklenburg County, North Carolina, to this Court.

This the 24TH day of November, 2003.

MAUPIN TAYLOR, P.A.

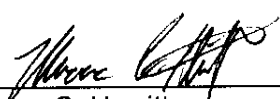
BY: 
M. Keith Kapp
N.C. State Bar No. 8850

BY: 
Marcus C. Hewitt
N.C. State Bar No. 23170
Attorneys for Defendant
Marcus David Corporation
P.O. Drawer 19764
Raleigh, NC 27619-9764
Telephone: 919-981-4000
Facsimile: 919-981-4300

CERTIFICATE OF SERVICE

I, Marcus C. Hewitt, do hereby certify that the foregoing or attached document was served upon the parties of record listed below by mailing a copy thereof to their counsel of record at the addresses indicated below with the proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Postal Service in Raleigh, North Carolina, on the 24th day of November, 2003.

MAUPIN TAYLOR, P.A.

BY: 

Marcus C. Hewitt
N.C. State Bar No. 23170
Attorneys for Defendant
Marcus David Corporation
P.O. Drawer 19764
Raleigh, NC 27619-9764
Telephone: 919-981-4000
Facsimile: 919-981-4300

SERVED:

LaRocha M. Moore
Legal Services of Southern Piedmont, Inc.
1431 Elizabeth Avenue
Charlotte, North Carolina 28204

Erin E. Burke
Womble Carlyle Sandridge & Rice, P.L.L.C.
One Wachovia Center
Suite 3300
301 South College Street
Charlotte, NC 28202-6025

STATE OF NORTH CAROLINA

File No.

03 CVD 15092

Mecklenburg County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff

Maria Arellano Cantu

Address

13716 Loch Loyal Dr.

City, State, Zip

Charlotte, NC 28273

VERSUS

Name Of Defendant(s)

Town and Country Toyota
Marcus David, Inc.
National Auto Finance

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Town and Country Toyota
9101 South Boulevard
Charlotte, NC 28273

Name And Address Of Defendant 2

Marcus David Corporation
by and through its registered agent
CT Corporation
225 Hillsborough St.
Raleigh, NC 27603

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

LaRocha M. Moore
Legal Services of Southern Piedmont, Inc.
1431 Elizabeth Avenue
Charlotte, NC 28204

Date Issued

9-22-03 2:43 ☐ AM ☒ PM

Signature

☐ Deputy CSC☒ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

AOC-CV-100, Rev. 10/01

• 2001 Administrative Office of the Courts

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (Type Or Print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF MECKLENBURG DISTRICT COURT DIVISION
FILE NUMBER: 03-CVD-15092
MARIA ARELLANO CANTU,)
Plaintiff,)
vs.)
TOWN AND COUNTRY TOYOTA,)
MARCUS DAVID CORPORATION,)
And NATIONAL AUTO FINANCE)
COMPANY,)
Defendants.)
COMPLAINT

NOW COMES Plaintiff, MARIA ARELLANO CANTU, by and through counsel,
complaining of Defendants, alleges and says:

1. Plaintiff is, and at all times complained of herein was, an adult natural person and a citizen and resident of Mecklenburg County, North Carolina.
2. On information and belief, at all times complained of herein Defendants, Town and Country Toyota and Marcus David Corporation were corporations incorporated under the laws of the state of North Carolina.
3. On information and belief, at all times complained of herein Defendant, Town and Country Toyota, was engaged in and doing business as Town and Country Toyota.
4. On information and belief, at all times complained of was engaged in business at 9101 South Boulevard, Charlotte, North Carolina as a duly licensed motor vehicle dealer pursuant to Chapter 12 of Article 20 of the North Carolina General Statutes.
5. At all times relevant, hereto, the defendant regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments, and is the person to whom the transaction which is the subject of this action is initially payable, making defendant a creditor within the meaning of TILA, 15 U.S.C. §1602(f) and Regulation Z § 226.2 (a)(17).
6. On or about June 26, 2002, Plaintiff purchased a 2003 Matrix from Town and Country Toyota.
7. On or about September 2, 2002 Plaintiff returned to Town and Country

Toyota to trade the Toyota Matrix for a lease on Toyota RAV 4.

8. At the time that Plaintiff returned to Town and Country to lease the Toyota RAV 4, she was advised that she would have to pay \$2500.00 to initiate the lease.
9. Approximately a week after Plaintiff signed the lease on the Toyota RAV 4, she was contacted by Town and Country Toyota and advised that there were problems with the lease that could only be cured by purchasing the RAV 4.
10. Plaintiff paid the \$2500.00 to change the RAV 4 from a lease to a purchase.
11. Approximately one month after Plaintiff paid the \$2500.00 down payment on the RAV 4, Town and Country Toyota contacted her and advised her that she would have to pay an additional \$200.00 because the salesperson had made a mistake in valuing the Toyota Matrix at the time of the trade.
12. On or about November 4, 2002, Plaintiff wrecked the Toyota RAV 4. Plaintiff's personal insurance paid \$20,060.25, GAP insurance paid \$4625.68, and Plaintiff was left to pay \$1830.21.

FIRST CAUSE OF ACTION
(Truth in Lending Act Violation)

13. Plaintiff incorporates paragraphs 1 through — above, as though fully restated in this Cause of Action.
14. The creditor violated the Truth in Lending Act and Regulation Z by failing to properly deliver all disclosures as required by the Truth in Lending Act and Regulation Z, including the following:
 - a. by failing to disclose accurately the "finance charge", in violation of 15 U.S.C. § 1638(a)(3), and Regulation Z, 12 C.F.R. §§ 226.18(d) and 226.4;
 - b. by failing to disclose accurately the "amount financed" in violation of 15 U.S.C. § 1638 (a)(2) and Regulation Z, 12 C.F.R. § 226.18(b); and
 - c. by failing to disclose accurately the "annual percentage rate", in violation of 15 U.S.C. § 1638(a)(4), and Regulation Z, 12 C.F.R. § 226.18(e).
15. By improperly starting to charge interest on the amount financed before actually providing the amount financed to Plaintiff, the creditor disclosed the annual percentage rate as lower than the true annual percentage rate.

SECOND CAUSE OF ACTION
(Unfair and Deceptive Trade Practices)

16. Plaintiff incorporates paragraphs 1 through — above, as though fully restated in this Cause of Action.
17. The transaction between Plaintiff and Defendants was a consumer credit sale subject to the North Carolina Retail Installment Sales Act, Chapter 25A of the North Carolina General Statutes, and the federal Truth in Lending Act (ATILAE).
18. Defendant's violation of the N.C. Retail Installment Sales Act and federal TILA constitutes an unfair trade practice pursuant to N.C.G.S. §75-1.1. The Dealership damaged Plaintiff through the use of unfair and deceptive trade practices as alleged herein.

WHEREFORE, Plaintiff prays the Court as follows:

1. Award actual damages to be established at trial pursuant to 15 U.S.C. § 1640 (a)(1);
2. Award statutory damages in the amount of twice the finance charge not to exceed \$1000.00 in accordance with 15 U.S.C. § 1640(a)(2);
3. Treble the damages awarded to defendant pursuant to N.C.G.S. §75-16;
4. Award plaintiff costs and reasonable attorney fees in accordance with 15 U.S.C. § 1640 and N.C.G.S. §75-16.1; and
5. For such other relief as the court deems appropriate.

LEGAL SERVICES OF SOUTHERN PIEDMONT, INC.
ATTORNEYS FOR DEFENDANT

By: 

LaRocha M. Moore, Attorney
Legal Services of Southern Piedmont
1431 Elizabeth Avenue
Charlotte, North Carolina 28204
(704) 971-2622

NORTH CAROLINA

MECKLENBURG COUNTY

MARIA ARELLANO CANTU,

Plaintiff,

v.

TOWN AND COUNTRY TOYOTA,
MARCUS DAVID CORPORATION, and
NATIONAL AUTO FINANCE COMPANY,

Defendants.

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
03-CVD-15092

NOTICE OF FILING OF
NOTICE OF REMOVAL

(OTHR)

TO: LaRocha M. Moore
Legal Services of Southern Piedmont, Inc.
1431 Elizabeth Avenue
Charlotte, NC 28204

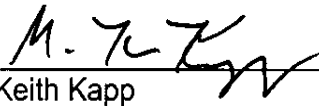
The Honorable Martha H. Curran
Mecklenburg County Superior Court
Post Office Box 37971
Charlotte, NC 28237-7971

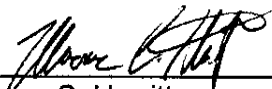
Erin E. Burke
Womble Carlyle Sandridge & Rice, PLLC
One Wachovia Center, Suite 3300
301 South College Street
Charlotte, NC 28202-6025

Defendant Marcus David Corporation, d/b/a Town and Country Toyota ("Defendant Town & Country"), hereby gives notice that this matter has been removed to the United States District Court for the Western District of North Carolina as authorized by 28 U.S.C. §§ 1331, 1367, 1441, and 1446. Defendant Town & Country's Notice of Removal of this action to that court is based upon federal question jurisdiction. A copy of the Notice of Removal is hereby filed with the above-named Clerk of Court, in accordance with the provisions of 28 U.S.C. § 1446(d), and a copy has also been served upon the Plaintiff in this matter by mailing the same to her named attorney of record.

This the 24th day of November 2003.

MAUPIN TAYLOR, P.A.

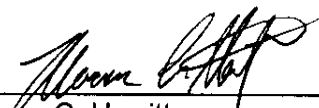
BY: 
M. Keith Kapp
N.C. State Bar No. 8850

BY: 
Marcus C. Hewitt
N.C. State Bar No. 23170
Attorneys for Defendant
Marcus David Corporation
P.O. Drawer 19764
Raleigh, NC 27619-9764
Telephone: 919-981-4000
Facsimile: 919-981-4300

CERTIFICATE OF SERVICE

I, Marcus C. Hewitt, do hereby certify that the foregoing or attached document was served upon the parties of record listed below by mailing a copy thereof to their counsel of record at the addresses indicated below with the proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Postal Service in Raleigh, North Carolina, on the 24TH day of November, 2003.

MAUPIN TAYLOR, P.A.

BY: 
Marcus C. Hewitt
N.C. State Bar No. 23170
Attorneys for Defendant
Marcus David Corporation
P.O. Drawer 19764
Raleigh, NC 27619-9764
Telephone: 919-981-4000
Facsimile: 919-981-4300

SERVED:

LaRocha M. Moore
Legal Services of Southern Piedmont, Inc.
1431 Elizabeth Avenue
Charlotte, North Carolina 28204

Erin E. Burke
Womble Carlyle Sandridge & Rice, P.L.L.C.
One Wachovia Center
Suite 3300
301 South College Street
Charlotte, NC 28202-6025

Case 3:03-cv-00564-CH Document 1 Filed 11/25/03 Page 13 of 13